

## REMARKS

An Office Action was mailed in the above-captioned application on April 11, 2006. Claims 1 and 3-39 were pending in the application. Claims 1 and 3-35 were allowed. Claims 36, 38, and 39 were rejected. Claim 37 was objected to. This Amendment and Remarks document is submitted in response to said Office Action.

### Allowed Claims

Applicant acknowledges with thanks the Examiner's indication that Claims 1 and 3-35 are allowed.

### The Rejection under 35 U.S.C. § 112, second paragraph

The Examiner has rejected Claim 38 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The second paragraph of Section 112 requires that the claims set out and circumscribe a particular area that applicants regard as their invention with a *reasonable* degree of precision and particularity. Specifically, the rejection states that "the semi-crystallized structure" lacks antecedent basis.

Claim 38 has been amended to depend from Claim 37, rather than 36. Claim 37 recites a semi-crystallized structure, providing the necessary antecedent basis. Reconsideration and withdrawal of the rejection is respectfully requested.

### The Rejection under 35 U.S.C. § 103(a)

The Examiner has rejected Claims 36 and 39 under 35 U.S.C. § 103(a) as being unpatentable over Yamazaki, et al., in view of Nakamura, et al. The Examiner bears the burden of establishing a prima facie case of obviousness (Section 103). In determining obviousness, one must focus on Applicant's invention as a whole. *Symbol Technologies Inc. v. Opticon Inc.*, 19 U.S.P.Q.2d 1241, 1246 (Fed. Cir. 1991).

Specifically, the rejection alleges that it would have been obvious to employ a sol-gel film of smaller than 300 nm thickness on Yamazaki's disc as Nakamura teaches use of a sol gel to provide for tracking guides. Solely in an effort to expedite prosecution, Claims 36 and 39 have

been cancelled without prejudice, rendering the rejection under 35 U.S.C. § 103 moot. Applicants reserve the right to prosecute the subject matter of Claims 36 and 39 in a continuing application.

#### The Objection to Claim 37

Claim 37 has been objected to as being dependent upon a rejected base claim, but the Examiner indicated it would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 37 has been rewritten in independent form.

#### Closing Remarks

Applicant believes that the pending claims are in condition for allowance. If it would be helpful to obtain favorable consideration of this case, the Examiner is encouraged to call and discuss this case with the undersigned.

This constitutes a request for any needed extension of time and an authorization to charge all fees therefore to deposit account No. 19-1970, if not otherwise specifically requested. The undersigned hereby authorizes the charge of any fees created by the filing of this document or any deficiency of fees submitted herewith to be charged to deposit account No. 19-1970.

Respectfully submitted,

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